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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,128	10/02/2003	Jean G. Brooks	3839-001US	6021
34372	7590	10/05/2004	EXAMINER	
G. RONALD BELL & ASSOCIATES P.O. BOX 2450, POSTAL STATION D OTTAWA, ON KIP5W6 CANADA			NOVOSAD, JENNIFER ELEANORE	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/676,128

Applicant(s)

BROOKS, JEAN G. 

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10-02-2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in 10/676,128 on October 2, 2003. It is noted, however, that applicant has not filed a certified copy of the Canadian application as required by 35 U.S.C. 119(b).

Information Disclosure Statement

The information disclosure statement filed October 2, 2003 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein, concerning the foreign reference, has not been considered, as evidenced by the line through the foreign reference on the attached copy of the information disclosure statement. For the reference to be considered, applicant must submit a legible copy.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the circular or elliptical shape, as in claim 12, be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Abstract

Applicant is reminded of the proper language and format for an abstract of the disclosure. The form and legal phraseology often used in patent claims, such as "means", *as in lines 2 and 6*, and "said," should be avoided.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 5 and 6 are rendered indefinite since the claim fails to further limit the *claimed* subject matter, i.e., the cooking device is not being positively claimed, and thus the metes and bounds of the claims cannot be properly ascertained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 13-15, 18; and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,178,844 (Ward *et al.* '844).

Ward *et al.* '844 disclose a rectangular supporting rack comprising rounded corners (see Figure 1 between 12 and 16 in the left front corner) for use in a cooking device comprising a planar surface comprising first and second portions and a connection means (18) *adapted* to allow connection of the portions to form a unitary surface whereby the portions are *capable* of being detached from each other to reduce the overall space occupied by the rack; the portions are similar in size (see Figure 1) and different in size (see Figure 3); the rack comprises an outer frame (at 12 in Figure 1); the unitary surface is *adapted* to support items above another planar surface, such as a floor of an oven; the rack comprises a plurality of mutually engaged rods (16)

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that are perpendicularly arranged and which define a solid, i.e., strong, surface with an array of apertures

With respect to claims 5 and 6, it is noted that since the cooking device is being functionally recited, in claim 1, the reference need only *be capable* of being used with such a functionally recited element in order to meet the claim. *Thus*, Ward *et al.* '844 are considered to *be capable* of being used with an oven or a grill. Note also claims 7 and 8.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ward *et al.* '844 as applied to claims 1-8, 13-15, 18; and 9-11 above, and further in view of U.S. Patent No. 4,432,334 (Holt '334).

Ward *et al.* '844 disclose the rack as advanced above.

The claim differs from Ward *et al.* '844 in requiring the overall shape to be circular.

Holt '334 teaches that it is old to utilize a circular shape.

Thus, it would have been an obvious design choice to one of ordinary skill in the art at the time the invention was made to have made the shape similar to that of a circular shape, for ease in use.

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Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward *et al.* '844, alone.

Ward *et al.* '844 disclose the rack as advanced above.

The claims differ from Ward *et al.* '844 in requiring the rack to be made from stainless (claim 16) or aluminum (claim 17).

Although Ward *et al.* '844 are silent as to the material used, it would have been an obvious engineering design choice to one of ordinary skill in the art at the time the invention was made to have fabricated the rack from the specified material for ease in economy and manufacture.

Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ward *et al.* '844 as applied to claims 1-8, 13-15, 18; and 9-11 above, and further in view of U.S. Patent No. 4,462,497 (Maule '497).

Ward *et al.* '844 disclose the rack as advanced above.

The claims differ from Ward *et al.* '844 in requiring the mutually engaged rods to have a joint that has ends smaller in diameter on one portion than the ends of the other portion so that a channel passes through each of the ends and is held in-line with a pin passing therethrough.

Maule '497 teaches mutually engaged rods (30 and 44) that have a joint at ends thereof whereby one (at 42) is smaller in diameter on one portion than the ends of the other portion (at 38) so that a channel passes through each of the ends and are held in-line with a pin (46) passing therethrough.

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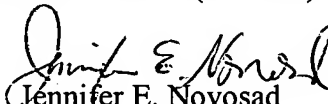
Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the rack of Ward *et al.* '844 with a joint as taught by Maule, for ease in use and assembly.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)-308-0839. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jennifer E. Novosad
Examiner
Art Unit 3634

Jennifer E. Novosad/jen
September 29, 2004